



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is fully furnished and is located within an apartment / condominium style complex. In mid-October 2014 the tenant reviewed information about the unit which was set out on the landlord's website. The tenant completed the online "reservation request" on October 15, 2014. In her reservation request she specifically documented her interest in a check in date of November 01, 2014, and a "length of stay" of 30 days." A telephone conversation and email exchanges then ensued between the landlord and the tenant, and the tenant sent a \$500.00 "deposit" to the landlord via interac email transfer. Subsequently, the parties signed a formal written tenancy agreement.

Partial copies of the written tenancy agreement have been submitted into evidence by both parties. The tenancy agreement used is the standard template document which is available to be downloaded from the Residential Tenancy Branch website. The template document is comprised of a total of 6 pages, however, page 3 is not included in the partial copies submitted by either party.

The tenancy agreement appears to have been signed by the landlord on November 01, 2014, and by the tenant on November 02, 2014. The agreement documents that the parties entered into a "30 nights" fixed term tenancy starting on November 01 and

ending on December 01, 2014. Rent is documented as \$85.00 each day / night, and payment is documented as due on the 1st day of each month.

While the tenant's original intention had been to move into the unit on November 01, 2014, she arrived from out of town to move into the unit on November 02, 2014. On the following day, by email dated November 03, 2014, the landlord provided a "friendly reminder" to "email the [balance of November's] rent when possible today." In her email response on the same date, the tenant states that she "didn't think it was du[e] until Nov 15th – my apologies. I will make some magical financial arrangements."

Thereafter, by email dated November 06, 2014, the tenant informed the landlord of her dissatisfaction with the unit, specifically in relation to proximity to public transit. In her documentary submission the tenant claims she then gave notice on November 07, 2014 to end tenancy. The tenant then vacated the unit on Monday, November 10, 2014, having stayed a total of 8 nights. Further to recovery of the filing fee, the landlord seeks compensation for the balance of the tenancy to November 30, 2014, claiming that the tenant failed to abide by the terms of the signed tenancy agreement. Despite online advertising, the landlord testified that it was not until December 12, 2014 when new renters were found for the unit.

The tenant claims she understood that the cost of tenancy would be calculated on a *per diem* basis, such that the final cost would be determined according to how many days she occupied the unit. The tenant compared this manner of cost calculation to that of stays in hotels. Further, the tenant claims that the landlord did not clearly inform her that there was a minimum 30 day stay, and she objects to being required to sign a tenancy agreement when she arrived at the unit on November 02, 2014, without any advance notice that such a document would form part of their agreement.

Analysis

I find that these are not unsophisticated parties, and despite whatever misunderstandings may have arisen from contacts between them prior to November 01, 2014, whether in relation to minimum stays, calculation of rent, and so on, I find that the parties entered into a formal tenancy by way of their signatures on a written tenancy agreement. Specifically, this document reflects agreement to enter into a 30 day fixed term tenancy for the period from November 01 to December 01, 2014, with rent calculated on a *per diem* basis of \$85.00, required to be paid on "the 1st day of month," in this case, November 01, 2014. Additionally, by way of a ticked box and the affixing of their respective initials in boxes provided on page 2, section 2 on the tenancy agreement, the parties further agreed as follows:

At the end of this fixed length of time: *(please check one option, i or ii)*

2(b)(ii) the tenancy ends and the tenant must move out of the residential unit. If you choose this option, both the landlord and tenant must initial in the boxes to the right.

After paying the landlord \$500.00, which reflects rent the equivalent of approximately 6 nights, I find that the tenant vacated the unit on November 10, 2014, following a stay limited to 8 nights (November 02 to 10, 2014).

Section 26 of the Act speaks to **Rules about payment and non-payment of rent**, and provides in part:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There is no evidence that the parties reached a mutual agreement to end the tenancy in advance of December 01, 2014.

Section 45 of the Act speaks to **Tenant's notice**, and provides in part:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, ...

In his application the landlord seeks compensation of **\$2,050.00** for unpaid rent, which is calculated as follows:

\$2,550.00:

[\$85.00 (per diem rent) x 30 days (November 01 – 30, 2014)]

MINUS

\$500.00: amount already paid by tenant (\$2,550.00 - \$500.00)

Based on the documentary evidence and testimony of the parties, and in consideration of the relevant statutory provisions, I find that the tenant ended the fixed term tenancy prior to "the date specified in the tenancy agreement as the end of the tenancy," and

paid rent in the limited amount of \$500.00. I find that the landlord has established entitlement to compensation for the balance of rent due for the 30 day period from November 01 to 30, 2014 of **\$2,050.00**, as claimed.

As the landlord has succeeded with the principal aspect of his application, I find that he has also established entitlement to recovery of the full **\$50.00** filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,100.00** (\$2,050.00 + \$50.00).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 08, 2015

Residential Tenancy Branch

